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October 18, 1968

DEPARTMENT OF LAW LETTER OPINION NO. 68-28-L (R-116)

REQUESTED BY: Mrs. Margaret Sherwood, President
ARIZONA STATE BOARD OF NURSING

QUESTION: Under A.R.S. § 32-1661, does the phrase
"immediate presence" mean in the same room
or can it be interpreted to mean within the
surgical or obstetrical suite?

ANSWER: In the same room.

A.R.S. § 32-1661, administration of anesthetics by registered nurse, provides:

"A licensed registered nurse may administer anesthetics under the direction of and in the immediate presence of a licensed physician or surgeon if the nurse has taken a prescribed course of anesthesia at a hospital in good standing, or is a graduate in the science of anesthesia from a recognized school or college."

The general rules of statutory construction are contained in A.R.S. §§ 1-201 to 1-217, and are applicable to this question. Specifically, words and phrases are construed according to the common and approved use of the language. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning, A.R.S. § 1-213. Generally, language in a statute is to be given the meaning by which it would be understood by the ordinarily intelligent man, unless it is clearly used in a technical sense. Southern Pacific Company v. Maricopa County, 56 Ariz. 247, 107 P.2d 212. Where the language of a statute being construed is ambiguous, the intent of the Legislature should be ascertained, if possible. Steward v. The

Industrial Commission, 69 Ariz. 159, 211 P.2d 217. Where a statute is plain and unambiguous, there is no room for construction. State v. Airesearch Manufacturing Company, 68 Ariz. 342, 206 P.2d 562. An unambiguous statute should not be interpreted, but should be enforced according to its clear language. Industrial Commission v. Price, 37 Ariz. 245, 292 Pac. 1099. Where statutory language is plain and admits of not more than one meaning, the Court must enforce it according to its terms. Millett v. Frohmiller, 66 Ariz. 339, 188 P.2d 457.

A.R.S. § 1-215, as amended, provides definitions to be used in construing statutes and laws of this state. The term "immediate presence" is not found defined in that section. The word "presence" is generally defined as the act, fact, or state of being in a certain place and not elsewhere, or within sight or call, at hand, or in some place that is being thought of. London v. Maryland Casualty Company, 10 Minn. 581, 299 N.W. 193; the existence of a person in a particular place at a given time particularly with reference to some act done there and then. Besides actual presence, the law recognizes constructive presence, which may be predicated on a person who, though not on the very spot, was near enough to be accounted present by the law, or who was actively cooperating with another who was actually present.


The word "immediate" is generally defined as present; at once; without delay; not deferred by any interval of time. Mullins v. Masonic Protective Association, 181 Mo. App. 394, 168 S.W. 843. In relation to space, the term "immediate" is generally defined as not separated in respect to place; not separated by the intervention of any intermediate object, cause, relation, or right.

The term "immediate" is further defined by Webster's New International Dictionary, Second Edition, as (1) having no intermediary or intermediation; (2) not separated or distant in time or space, and with particular reference to space as in uninterrupted relation; continuous; direct; as the immediate contact of two objects.

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For the reason that the term "immediate presence" is not defined in the statute, and does not appear to be a technical or ambiguous term, the words would have to be given the ordinary and general meaning. It is the opinion of this office that the word "presence" preceded and qualified by the word "immediate" in A.R.S. § 32-1661 would have to be interpreted as meaning in the same room or similar close contact as opposed to within the surgical or obstetrical suite.

Respectfully submitted,


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The Attorney General

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